

PLANNING AND ZONING COMMISSION

MEETING MINUTES

OCTOBER 11, 2012

AGENDA

New Cases

- 1. Community Plan 2012 Amendment
12-046ADM Administrative Request
(Presentation and Discussion)**
- 2. Ballantrae, Sections 1 and 2, Entry Feature Dalmore Lane and Eiterman Road
12-065AFDP Amended Final Development Plan
Right-of-Way Encroachment
(Approved 7 – 0)**

Chair Chris Amorose Groomes called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance. Other Commission members present were Richard Taylor, Amy Kramb, Victoria Newell, Warren Fishman, Joe Budde, and John Hardt. City representatives were Steve Langworthy, Asim Haque, Justin Goodwin, Sharonda Whatley, Tori Proehl, Jordan Fromm, and Flora Rogers.

Motion and Vote

Mr. Fishman moved to accept the documents into the record as presented. Mr. Hardt seconded the motion. The vote was as follows: Ms. Amorose Groomes, yes; Mr. Taylor, yes; Ms. Kramb, yes; Mr. Budde, yes; Ms. Newell, yes; Mr. Hardt, yes; and Mr. Fishman, yes. (Approved 7 – 0.)

Mr. Hardt referred to the September 6, 2012 meeting minutes and requested that on page 6, last paragraph on the bottom of the page, the word "continuation" be changed to "deadening."

Ms. Kramb pointed out minor typographical errors on page 16, sixth paragraph from the bottom, second to last sentence strike the word "over;" on the next sentence strike the word "said;" and on page 21, fourth paragraph from the bottom, the last sentence, strike the word "she."

Ms. Newell requested changes on page 8, first paragraph to clarify that she was questioning the applicant if there were specific state regulations they were complying with that required the six foot high fence; and on the seventh paragraph attributed to Ms. Newell, last sentence to change the word "real" to "primary."

Motion and Vote

Ms. Kramb moved to accept the September 6, 2012 meeting minutes as corrected. Ms. Newell seconded the motion. The vote was as follows: Mr. Budde, yes; Mr. Hardt, yes; Mr. Fishman, yes; Mr. Taylor, yes; Ms. Amorose Groomes, yes; Ms. Newell, yes; and Ms. Kramb, yes. (Approved 7 – 0.)

Ms. Kramb referred to the September 20, 2012 meeting minutes and requested corrections on page 4, fourth paragraph from the bottom attributed to her, second sentence strike the word "said" and on the last sentence strike the word "of" before District.

Ms. Newell corrected page 11, fifth paragraph first sentence, to replace “of the building” with “was removed.”

Mr. Hardt corrected page 14, fourth paragraph from the bottom, change the word “trowel” to “troweled” and page 25, second paragraph from the top, change the word “molds” to “malls.”

Motion and Vote

Ms. Kramb moved to accept the September 20, 2012 meeting minutes as corrected. Mr. Hardt seconded the motion. The vote was as follows: Ms. Amorose Groomes, yes; Mr. Taylor, yes; Mr. Fishman, yes; Mr. Budde, yes; Ms. Newell, yes; Mr. Hardt, yes; and Ms. Kramb, yes. (Approved 7 – 0.)

Communications

Steve Langworthy reminded the Commission about the trip on Monday, October 15th, leaving City Hall at 9:30 am. He said they have invited some of the Administrative Review Team members and MKSK, the consultant for the Bridge Street District, to join the group. MKSK will talk about projects they have been involved in and other general projects in the downtown area.

Mr. Langworthy said they will have meeting dates for next year to vote on at the next meeting in November and asked that the Commission bring their calendars.

Administrative Business

Ms. Amorose Groomes asked if anyone wished to remove anything from the consent agenda. [There was no response.] She briefly explained the rules and procedures of the Planning and Zoning Commission. She announced that they will hear the consent case #2 first. [The meeting minutes reflect the published agenda order.]

1. Community Plan 2012 Amendment 12-046ADM Administrative Request

Ms. Amorose Groomes introduced this request to review potential amendments to the special area plans in the 2007 Community Plan as part of the 2012 Community Plan Amendment process, including updates to the text and graphics.

Justin Goodwin said this was an update on some new content that has been added to the Community Plan website. They are focusing on the Economic Advancement Zone Plan, now renamed to the West Innovation District Plan and some new functionality of the site.

Mr. Goodwin said they received a comment from the Commission last week to show the edited text in color, in addition to strike through and underline, so they have started to do that.

Mr. Goodwin said they now have the West Innovation District added to the area plans, for which updates are in progress. He said the Commission recommended approval to City Council of the Economic Advancement Zone plan and it was approved in June 2011. He said it was a lengthy and detailed area plan as compared to other area plans. The fourteen separate sections in that document are now incorporated as separate pages with a table of contents on the side of the page, so there are different ways to access these sections. He said they have updated the text from the EAZ Plan, much of which was just changing the name. There are few substantive changes to the text. He said one change was to note that the Dublin Entrepreneurial Center is moving out of this district to the Metro Office District to make way for Ohio University.

Mr. Goodwin said all of the text is uploaded but not all of the red line and the additions are complete. He said they are incorporating all of the graphics from the EAZ Plan as well and there are a couple of examples that they have worked on. He said there are a number of app items in the plan showing land use and transit options and the transportation plan is specific for the Innovation District, they have not yet incorporated those into the area plan map viewer that was presented last week. Each of the maps are shown currently as a graphic on the website.

Mr. Goodwin said one of the areas they have been focusing on is creating architectural identity and that section of the EAZ Plan is set up as a pattern book and there are a lot of graphics that are intended to function in conjunction with the text to explain the intent for the district. They have tried to incorporate the different graphics, talking about different types of buildings with different examples and then specifically for different architectural components. He said all of the graphics are incorporated as photo galleries, so a user can click on these and then move through a slide show to access the different images. He said this is another piece of functionality that the website editor has been working on and will be incorporated throughout the entire Community Plan website.

Mr. Goodwin thanked Tori Proehl, Planning Assistant, for working on getting all these graphics ready for upload to the site, he said it is a lot of tedious work. He said they asked who all is working on this at the last meeting and she has done a lot of the graphic processing for the website and not just the Innovation District. He noted that Tori is leaving us and her last day is Friday, October 12, 2012 and is going to 3D Group.

Mr. Goodwin said moving forward with the Community Plan as the upload new larger sections of content will keep the Commission updated with emails over the next month. There is a special meeting scheduled for November 8th and the meeting is entirely dedicated to the Community Plan and will focus on the remaining area plans that need updated and the main being the US 33 Corridor Plan updated in response to the Innovation District Plan and incorporation of the Bridge Street District Plan as an area plan as well.

Ms. Amorose Groomes said it is continuing and will be wonderful when they get there. She asked if there was anyone from the general public that would like to speak with respect to this application. [There were none.]

2. Ballantrae, Sections 1 and 2, Entry Feature Dalmore Lane and Eiterman Road 12-065AFDP Amended Final Development Plan Right-of-Way Encroachment

Ms. Amorose Groomes introduced this application requesting an amended final development plan and a right-of-way encroachment for a subdivision entry feature including landscaping and stone monoliths for Sections 1 and 2 of the Ballantrae subdivision. The site is at the intersection of Dalmore Lane with Eiterman Road. She said they did not need a presentation and asked if there was anyone from the general public that would like to speak with respect to this application.

Lorie Foster, 5629 Royal Dublin Drive, at the southeast corner of Dalmore and Eiterman, stated that she came to the meeting to review the plans.

Ms. Amorose Groomes asked for a brief overview.

Mr. Langworthy said the plan has an arc indicated in red to reflect one of Planning's conditions to make the design look similar to the other entry features throughout Ballantrae, then showed an example of an existing design.

Mr. Langworthy indicated where the monoliths will be placed and are that no signs were proposed and there was a condition that if they wanted a sign it could have to be no more than six feet in height to the top of the sign.

Ms. Foster asked about maintenance. Mr. Langworthy indicated the homeowners association is responsible.

Ms. Amorose Groomes asked if the presentation answered the questions or concerns. Ms. Foster asked if someone had looked at the size and placement of the stone to make sure it does not obstruct any view of turning vehicles. Mr. Langworthy said that engineering has a sight distance triangle they use and this is well outside their triangle.

Mr. Taylor said they need to tweak the language on condition 2 because the height of the copy can be read as the height of letters and not the height for the top of the copy. In response to a question from Mr. Fishman, Mr. Langworthy said they are permitted to have copy with the name of the subdivision without further approvals.

Mr. Hardt suggested changing the wording of condition 2 from "height" to "elevation." Mr. Taylor read for the record that the condition reads "the elevation of the copy shall be limited to 6 feet above grade."

Ms. Amorose Groomes said that the condition 2 has been modified from the planning report and asked if the applicant agreed to the four conditions. Mr. Dan Pugh, 5916 Baronscourt Way, represented the homeowners association and he agreed to the conditions and said they will make sure the sign is below six feet.

Motion and Vote

Mr. Taylor moved for approval of this amended final development plan because the proposal complies with the amended final development plan review criteria and the development standards within the area, with four conditions:

- 1) The applicant gain approval of a right-of-way encroachment from City Council prior to the installation of the stone monoliths;
- 2) Should the applicant choose to incorporate the subdivision name on the stone monoliths the elevation of the copy shall be limited to 6 feet above grade;
- 3) The layout of the planting areas be altered to reflect the same semi-circular design as the existing subdivision entry features; and
- 4) The landscape plans be revised to use catmint in lieu of the proposed Russian sage, and cranberry viburnum for the viburnum.

Mr. Fishman seconded the motion. The vote was as follows: Ms. Kramb, yes; Mr. Hardt, yes; Mr. Budde, yes; Ms. Newell, yes; Ms. Amorose Groomes, yes; Mr. Fishman, yes; and Mr. Taylor, yes. (Approved 7 – 0.)

Commission Roundtable

Ms. Amorose Groomes said that she knew they had a couple of things to discuss briefly.

Mr. Fishman said he was at the Council meeting when Mr. Langworthy presented the Wendy's Rezoning application and said Mr. Langworthy later shared the development agreement with him.

Mr. Langworthy said after the Commission meeting Jennifer Readler, Dana McDaniel and Steve met with Wendy's to ask if they would reconsider some sort of mechanism such as a deed restriction or a development agreement. They talked Wendy's real estate attorney, the Head of Governmental Relations,

and Mr. Hill. Together they talked over the parameters of what they thought might be acceptable to both Wendy's and the City and ended up agreeing to draft a development agreement that would try to address some of the Commission's concerns.

Jennifer Readler drafted a development agreement that prohibited certain uses such as the automotive related uses, building materials sales, sexually oriented businesses, and all of the conditional uses, with the exception of the drive-thru and patio which was attached to Wendy's. It also states that if Wendy's vacates the site other uses must go through the equivalent of a final development plan process of the PUD process. This will require the approval of the Planning and Zoning Commission. City Council will discuss this at its second reading.

Mr. Hardt said he watched the meeting online and asked that if a new owner came what review criteria would be used for its review. Mr. Langworthy noted that the final development plan standards of a PUD would be used.

Ms. Kramb said there would not be a preliminary development plan text to compare to for review. Mr. Langworthy said the development would be submitted and be reviewed against the PUD criteria for what they have but would still be in the Community Commercial zoning.

Mr. Hardt said they would be reviewing the regulations of the Community Commercial district. Mr. Langworthy said yes but the development agreement prohibitions for uses would be included.

Ms. Kramb said one of her big concerns was the look of a new development and not just the uses. Mr. Langworthy said that was part of the final development plan criteria and would be more open to review than a development text. A new development would not get carte blanche but would have to meet the review criteria of the PUD.

Mr. Langworthy said it would be like going through a preliminary development plan process where they get to see architecture, especially since most development texts do not speak directly to architecture, although they might have something about color or materials, but usually not architecture. It is usually the building elevations that are submitted. He said in some respects it will be a mix of a preliminary development plan and a final development plan, but they could not require a preliminary development plan since it would kick off a rezoning.

Mr. Fishman asked what triggers the development agreement, a change in ownership or a change in use or both. Mr. Langworthy said either would.

Mr. Fishman said he does not understand it, because when they review a final development plan they are comparing it to the original plan that the Commission had approved and the original text that they approved, so what are they matching it. Mr. Langworthy noted that some of the older PUDs did not have a preliminary development plan, only had a final development plan, so essentially what they bring in is what they evaluate as if it were the first stage of the process, rather than the last stage.

Mr. Fishman said he remembers some final development plans where the Commission started from scratch and they brought in a plan and sometimes they were sent home with comments. Mr. Langworthy said that could happen because there is no PUD text to go with this agreement.

Ms. Amorose Groomes said since there are no details it would give the Commission greater latitude to review. Mr. Langworthy said in respects to the building, the items listed in Community Commercial district would be governed by the CC zoning, like the setbacks, parking and landscaping.

Ms. Amorose Groomes said the architecture and signs would not be governed. Mr. Langworthy said if they demolished the building the variances go away and they would have to meet the Community Commercial sign requirements at that point.

Mr. Hardt said his heartburn was if someone came in with a redevelopment of that site and they were showing 25 foot building setbacks and this body says it should be up against the sidewalk they would not have the latitude to do that because the straight zoning district calls for a specific setback, which is out of whack with the BSC. Mr. Langworthy said it does not preclude someone in the future from asking for a rezoning to something else as well.

Ms. Amorose Groomes said they have learned a really valuable lesson that maybe they need to think harder about rezoning a property like this and see if there are other options.

Mr. Taylor said he also watched the Council meeting and saw the presentation and the gentleman that got a lot of time with his playground project. He said what was frustrating to him in watching was the message that they had been communicating was still not getting through to Council, which was very clear in the comments that were made by a couple of the Council members Monday night in regards to the Wendy's project. He said the concerns that this body had were mischaracterized as being with the use on that site and he does not think that was the major concern. Mr. Taylor reiterated that what the Commissioners were concerned with was that the uses on the site would not change and that they were going to have fast food on there forever, if it is in Community Commercial. He said as Mr. Hardt has stated numerous times throughout the three year discussion on the Bridge Street Corridor Code and rezoning, it is supposed to be a form based code and he realizes it has become a hybrid of that, but the major concern is in the look and the character, placement, streets and sidewalks and they are not concerned if it is a hardware store or fruit stand inside the store.

Mr. Langworthy said that Mr. Hardt had said there are several uses that he found objectionable that Planning was trying to correct. Mr. Hardt said that was some of his concerns but not exclusively.

Mr. Taylor said he thought it would be more accurate to characterize the concerns of this Commission that they were fine with Wendy's and he appreciates what was said to Council that the Commission were enthusiastic supporters of Wendy's, it is what happens when Wendy's is no longer there. He said at that point it would be their preference to have Bridge Street zoning. He said there had been comments about what is essentially an outlot for the existing shopping center, but it is his contention, and he does not think he is alone, in thinking that if the Bridge Street Corridor develops as planned, that sea of asphalt and a one story shopping center is going to become much less valuable as a shopping center. He was concerned that it a large piece of land in a highly visible location in the center of town and someone is going to want to put more buildings there.

He noted the movie "UP," with the house sitting with buildings around it, and that is what he sees happening there because this site is Community Commercial. He said he pictures a Taco Bell sitting there with all this great stuff around it and they cannot redevelop that site. Mr. Taylor indicated that a couple of Council Members questioned what the Commission's reasons were for the disapproval recommendation, and it seemed to him that they were not interested in what the Commissioners were concerned about and that Council put their own characterization of those concerns. Since no Commission members were there to defend their views or set the record straight, he is concerned that this thing is going to proceed with an inaccurate characterization of what the Commission's concerns were.

Mr. Taylor said the bigger issue is that the Commission has been asking for a long time, and that the Chair has been very vocal about this, to have an opportunity to discuss the rezoning issue with Council. They knew the Wendy's issue was coming up and that other rezonings were possible and who within the District might want a rezoning to their own benefit. He said contrary to what one of the Council Members said they did not want to allow rezonings but it may have been because they did not understand the

waiver process or they did not understand the rezoning process. Mr. Taylor said what the Commissioners did not understand was Council's reason for allowing rezonings in the Code after the Commission had already made its recommendation.

Mr. Taylor said that the Commissioners that were a part of putting the Code together remember that it began with not allowing a rezoning out of the Bridge Street Districts. He remembered that at the time there were two concerns with that, one was the legal concern, which was addressed by putting 153.234 back in as an amendment process and the other was this body's concern that if a project came along that they really liked but it did not meet the strict requirements of the Bridge Street Corridor Code. He said that this is where the waiver process came from, which is a great solution to that because it gives them the potential for a lot of flexibility in resolving minor issues, such as a project that is required to have 70 percent brick but has only has 67 percent would be able to apply for a waiver.

Mr. Taylor said the bigger issue for Wendy's is that Council had no discussion at all about the merits of the case, which went to his initial question in trying to understand the importance of this particular project. He had written "why" in big letters on his planning report; what is it about this rezoning that best serves the applicant and the City? He said that he could not come up with anything.

Mr. Taylor said that in a normal situation someone comes in and says they have a building they would like to put in a certain place, but they cannot make the building meet the zoning requirements, and in this case, it was so far from the zoning that in Planning's own admission they could not fully evaluate it in terms of the Bridge Street Code, as they did not have elevations or other information, so it was impossible to make all the calculations. He said that the normal response would be to find another site. He said he understands why they did not say that here, but he thought if Council passes this at the second reading, without a substantial discussion of the merits of this case, it is going to be really tough if another applicant decides to come back in here in a couple of weeks and says he has a house in the Bridge Street Corridor, and it does not meet the Bridge Street Corridor Code. He said if that property owner wants to rezone it to R-1 and if it meets the requirements of R-1 what is the Commission going to say, because they said Wendy's could have this for no other reason except that your building does not fit the current zoning.

Mr. Taylor said finally back to the question of what Council's intention was in inserting the provision to be able to rezone out of the Bridge Street Corridor. He would like to just review some of the conversation that happened at that meeting. Mr. Taylor then read quotes from the meeting. Mr. Taylor said what he heard from that conversation was that the Bridge Street Code is optional.

Ms. Kramb said it is optional and anyone could zone out of it and that is what she got from all of this.

Mr. Taylor said that the City spent millions of dollars writing and thousands of hours of staff and hundreds of hours of the Commission and now it is just another option. Ms. Kramb agreed.

Mr. Taylor said they have been trying to find out what Council's reason was for putting the rezoning option in. He is greatly concerned with the next project that might come along. He said when they were going through the rezoning process, the owner of the gas station at the corner was concerned that if he was rezoned into the Bridge Street Corridor and they wanted to remodel their building, their usual method was to scrape the site and start over again, and that he would not be able to build the same building. He then would want to be zoned out of Bridge Street so he would not have to modify his building and still keep the same use on the same site. He cannot do that now, if he recalls how the rezoned that, so his option is that he wants to be CC. Ms. Kramb said they have to say yes.

Mr. Taylor said unless Council is extremely clear about the reasons why this rezoning should be granted, he thinks they have deep trouble here.

Mr. Taylor said he looked through the Code to look for another way to make this work and he noted the Planning and Zoning Commission's Site Plan Elective Review and under this process, he read that "a site plan is required", he said it does not say there is a situation where you can ask for whatever you wanted and even if it does not meet the requirements for site plan review, they could still have allow the applicant to do what they wanted.

Mr. Taylor read the Planning Zoning Commission Site Plan Review Elective Review noting that the Planning and Zoning Commission reviews site plans under certain circumstances, and one of those is that ART concludes that the application raises complex issues and he thinks Wendy's falls into that category. He read that "an applicant may request a site plan review by the Commission to modify any provisions of 153.059 and 062 through 065", he said that is the entire Bridge Street Corridor Code except for road, lots and blocks, which would not apply here. He said it does not require any waivers and they can modify any provision of the Code they want.

Mr. Taylor read "the only requirement is that the following conditions are met, the development proposal as modified will otherwise meet the spirit and intent of the district as it was located and the vision report." He said the planning report stated that it met the vision report, the issues of whether it met the spirit and intent of the district, they would have to discuss. He said the second criteria he read "the requested modification will result in a development of equal or greater quality." He said it probably would have but they did not see the elevations, so they do not know, but they might have consented to that. He read thirdly "the requested modification would better be addressed through an individual modification rather than an amendment to the requirements of this chapter." He said it would be better to do it here than rezone it as one of the criteria for that and he would contend under this condition it would be better to deal with here than to rezoning it. He read the final one "the request for a modification is caused by unique site conditions." He said he remembers discussing this particular passage in detail when it came up. He continued to read "or conditions on surrounding properties and is not being requested simply to reduce cost or a matter of general convenience."

Mr. Taylor said this is Wendy's in a nut shell and unless he is misunderstanding this, one of the options open to the applicant was to say to them was to suggest a site plan review elective review that does not go to City Council and gets modified here without any waivers.

Mr. Goodwin said there is a technical clarification that it would still potentially require waivers, when in the process it could come to the Commission, so the net effect is no difference. They would have the ability to modify aspects of the Bridge Street Code, but technically they would be waivers.

Ms. Amorose Groomes said they would have to meet the waiver criteria. Mr. Goodwin agreed.

Mr. Taylor said they would vote on them one at a time, it would be part of the presentation and essentially be one big waiver if they did that. Ms. Kramb said that would get to the point where they didn't want to make waivers easy, so if they did through that process they would not be giving all these easy waivers.

Mr. Taylor said his point is that it would seem to him that this process, if it makes sense the way he thinks it does would be faster, cheaper, easier and quicker and would keep the Bridge Street Corridor Code 100 percent intact when Wendy's is no longer there. He said he did not know if this is something that he is proposing that they just keep in mind for the next one or if there is time to have this brought to Council's attention before they vote on the 22nd. He said he is assuming this would be a thirty second vote in the positive by this board based on what he heard at the last discussion.

Mr. Fishman said he would think that Council will hear this because they will read the minutes.

Mr. Taylor said Council read the minutes of the last one and they did not come out with the same conclusion. Ms. Amorose Groomes said their conclusion was that they did not understand the Code that they wrote.

Mr. Fishman said he was at the meeting and he thought it was not his place to saying anything at the meeting when this was brought up and he knew there was a second reading and did not know that Mr. Taylor was so well prepared and he was a little frustrated. Mr. Langworthy shared the development agreement with him, but obviously the agreement does not do what they need it to do as far as keeping the Bridge Street Corridor Code intact.

Ms. Kramb said that she thinks that if they rezone it without a discussion and without criteria as to why there is no leg to stand on and anyone who comes through they are going to have to say yes.

Mr. Taylor said if Jennifer Readler was here she would say something, but he would say in court it may not be a precedent, but precedent happens right here and they are the ones have to listen to someone scream at them because his neighbor got treated differently than he did and they are the ones that have to resolve that here so it doesn't go to court.

Ms. Kramb asked how could they say the parcels are different.

Ms. Amorose Groomes said it may not be legal but there might be an ethical issue.

Ms. Amorose Groomes asked if Steve had any comments to Mr. Taylors' thoughts.

Mr. Langworthy said nothing specific, but one of the things they started the discussions with Wendy's for the development agreement they requested that if Wendy's left that it would go back into a Bridge Street District and they rejected that particular offer.

Ms. Amorose Groomes said that is the most alarming portion when they are done with it and they are out of the corridor and they do not have a commitment to it ever completing the "missing teeth" when they were talking about leaving properties out of the corridor.

Mr. Fishman said he will be out of the country on the 22nd, but the rest of the Commission would be here and Council deserves to hear in person Mr. Taylor's rendition of what was given today and Council should and will probably be reasonable and if they could see a viable alternative they might not vote on it or reverse the vote, it is not too late.

Mr. Taylor said they are their own body and the Commission works for them, they could do what they please, he would rather they not proceed with an inaccurate perception of the Commission's concerns.

Mr. Taylor said he would like this to be communicated prior to that. Mr. Fishman said they will because it is in the minutes.

Ms. Amorose Groomes said there was nothing left to say and thought that Mr. Taylor had given a beautiful interpretation of why the Code was written as it was and was for this very in her recollection that the Code was written this way for this scenario.

Ms. Amorose Groomes asked if there were other comments. [There were none.] She adjourned the meeting at 7:30 p.m.

*As approved by the Planning and Zoning Commission on November 1, 2012.